

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	
	)	
In the Matter of	)	
	)	
Implementation of the Cable	)	MM Docket No. 92-260
Television Consumer Protection	)	
and Competition Act of 1992	)	

**OPPOSITION OF BELL ATLANTIC<sup>1</sup>**

The Commission should reject Time Warner's argument that Open Video System ("OVS") providers should not be eligible to use the existing "home run" wiring within a multiple dwelling unit ("MDU") building but must build their own inside wiring.<sup>2</sup> Time Warner contends that OVS providers "are legally required to construct end-to-end facilities all the way to end user MDU residents, and therefore have no basis to claim the right to use pre-existing MDU home run wiring."<sup>3</sup> This claim has no basis in law or policy.

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

<sup>2</sup> Time Warner Cable, Petition for Reconsideration at 21-22 ("Time Warner").

<sup>3</sup> *Id.*

First, Time Warner claims that Section 653 of the Act,<sup>4</sup> which requires an OVS provider to make access to its system available to multiple programmers on a non-discriminatory basis, somehow requires an OVS provider to build its own inside wiring, “because use of the home runs will likely be exclusively allocated to the OVS system’s affiliated provider.”<sup>5</sup> There is no basis for this undocumented claim. OVS providers must, under the Act, carry the programming of both affiliated and nonaffiliated programmers on a non-discriminatory basis.<sup>6</sup> Consistent with this requirement, they may not lawfully limit programming transmitted over the home run wiring to only an affiliate’s programs. So long as the home run wiring, whether it is existing wiring or newly-constructed by the OVS provider for this purpose, carries programming from affiliated and nonaffiliated programmers on a non-discriminatory basis, the statutory requirements are met.<sup>7</sup> Nowhere does the Act require that the OVS provider must construct all parts of its network.

Nor does the MFS Order that Time Warner cites<sup>8</sup> support its claim. In considering whether or not to grant Metropolitan Fiber Systems’ (“MFS’s”) petition to transition its existing system to an open video system, the Commission focused on whether MFS’s system had qualified as a video dialtone system. The Commission affirmed the Cable Services Bureau’s (“Bureau’s”) finding that it did not qualify as video dialtone and, as a result, could not qualify as

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<sup>4</sup> 47 U.S.C. § 573

<sup>5</sup> Time Warner at 22.

<sup>6</sup> *See* 47 U.S.C. § 573(b)(1).

<sup>7</sup> In some configurations, the programming that is delivered to a customer’s settop box will be only the specific channels to which the customer has subscribed, rather than all channels carried over the OVS.

<sup>8</sup> Time Warner at n. 36, citing *Metropolitan Fiber Systems, Order on Reconsideration*, 12 FCC Rcd 6901 (1997) (“MFS Order”).

an OVS. Therefore, none of the Commission's findings is directly applicable to OVS operators. Even if the MFS Order could be read to apply to OVS, however, nothing in that order requires an OVS operator to construct all parts of its end-to-end system. In that Order, the Commission simply affirmed of the Bureau's conclusion "that video dialtone operators must provide a basic platform through which multiple video programmers would receive uninterrupted service from the headend to end-user subscribers."<sup>9</sup> Time Warner does not show how this condition would not be met through use of existing home run wiring, nor could it. Whether an OVS operator deploys new wiring or obtains access to existing wiring, this requirement is satisfied so long as both affiliated and nonaffiliated programmers are able to deliver their programs to end users.

Nor is there anything in the Commission's rules that precludes OVS providers from using pre-existing home run wiring to reach end users in an MDU. In fact, the rules even contemplate that an open video system could be certified without the need for any new construction.<sup>10</sup> In addition, the definitions of a cable system and an OVS in the rules are substantively identical.<sup>11</sup> As a result, if the OVS definition could somehow be read to require a provider to construct its own home run wiring, which it cannot, the same reasoning would apply to a cable system.

Finally, Time Warner's claim that OVS providers should be denied the same right to access existing wiring that the Commission affords to all other video providers is inconsistent with the Commission's own policy findings. The Commission found in the very order that Time Warner wants reconsidered that MDU subscribers should have the ability to choose among

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<sup>9</sup> MFS Order at ¶ 24.

<sup>10</sup> 47 C.F.R. § 76.1502(a) ("If no new construction is required, the Commission must approve [OVS] certification prior to the commencement of service.")

<sup>11</sup> Compare 47 C.F.R. § 76.5(a) (cable system) with 47 C.F.R. § 76.1500(a) (OVS).

competing service providers.<sup>12</sup> It also recognized that some service providers may have difficulty obtaining access to the property to run additional home run wiring, because the MDU owners object to the disruption that such installation could cause.<sup>13</sup> Therefore, it established rules under which all competing video providers may gain access to such wiring. OVS providers face the same access problems as other video providers, and there is no policy, nor any provision in the rules, that justifies depriving end users access to OVS networks because they cannot use the existing wiring while their competitors are free to do so.

Even where MDU owners interpose no objection to building duplicate inside wiring, preventing only OVS providers from accessing existing home run wiring competing video providers will increase OVS costs and delay initiation of service, putting the OVS operator at a competitive disadvantage. It will also potentially disrupt all tenants of the MDU during the construction. In those cases where the existing home run wiring will not meet the OVS provider's needs, new construction is unavoidable. However, when the wiring can be used, there is no policy basis for depriving OVS providers of the right to use it.

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<sup>12</sup> *Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 97-376, ¶ 35 (rel. Oct. 17, 1997).

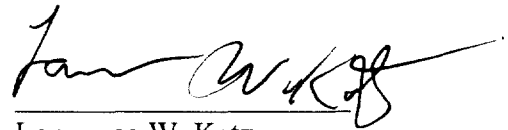
<sup>13</sup> *Id.*

Accordingly, Time Warner's request should be denied.

Respectfully Submitted,

**The Bell Atlantic Telephone  
Companies**

By their Attorney

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz

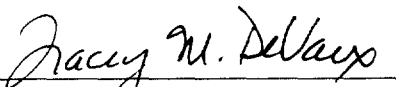
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CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of January, 1998 a copy of "Opposition of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on the attached list.

  
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